IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12389 of 1999

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Nawal Kishore Sharma, son of Late Nand Kishore Prasad Sinha, resident of Kishore Kutir Road, Rajendra Nagar, Police Station- Kadamkuan, District- Patna

.... Petitioner

Versus

1. The State Of Bihar, through the Commissioner-cum-Secretary, Department of Rural Development, Government of Bihar, Patna.
2. Special Secretary, Department of Rural Development, Government of Bihar, Patna.
3. Director, Panchayati Raj, Panchayat Raj Directorate, Department of Rural Development, Government of Bihar, Patna.
4. Deputy Development Commissioner cum Chief Executive Officer, Zila Parishad, Gaya.
5. Accountant General, Bihar, Patna.

.... Respondents

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Appearance :
For the Petitioner : Mr. Shiv Kumar, Advocate.

For the Accountant General, Bihar : Mr. L.P.K. Rajgrihar, Standing Counsel.

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CORAM: HONOURABLE MR. JUSTICE V.N. SINHA

ORAL JUDGMENT

Date: 27-08-2012

Heard learned counsel for the petitioner and the State.

2. Petitioner is the son of Late Nand Kishore Prasad Sinha, who was appointed as a Junior Engineer in the District Board, Gaya way back in the year 1936. Later, he was promoted as Assistant Engineer and then as District Engineer. While serving as District Engineer Sri Sinha superannuated with effect from 28.02.1969. Having superannuated Sri Sinha left for his heavenly abode in the year 1975. The Government in the Finance Department issued Letter No. 769 dated 29.10.1979 for granting pensionary benefit to the employees of the District Board taking

into account service rendered by them from 1.4.1949 or the date of appointment whichever is later, reiterating the said Memo No. 122(25) dated 14.3.1986 was also issued. In the light of the aforesaid instruction dated 14.3.1986 mother of the petitioner requested the authorities to consider the case of her husband for grant of pensionary benefit from 1.3.1969 till 12.5.1975, the date of death of the service-holder and family pension from 13.5.1975. Aforesaid request was not considered by the Government and mother of the petitioner filed C.W.J.C. No. 4572 of 1997 which was disposed of under order dated 30.7.1998, Annexure-10 directing the State-respondents to consider the case of the husband of the petitioner for grant of pensionary benefit taking into account the service rendered by her husband in the District Board during the period between 1.4.1949 till 28.2.1969 out of which period between 1.5.1961-28.2.1969 was served as District Engineer. Aforesaid request of the petitioner was required to be considered in the light of the order of the Division Bench of the High Court dated 3.7.1989 passed in C.W.J.C. No. 5869 of 1986 and other analogous matters, Annexure-1. The State Government having received the order of the High Court considered the request for grant of pension for the period between 1.3.1969 till 12.5.1975, the date of death of the service-holder and family pension for the period between 13.5.1975 but rejected the same under impugned order communicated to the mother of the petitioner under Letter No. 3657 dated 2.12.1999, Annexure-11. It appears request for

grant of pension, family pension has been refused by the Government on the ground that the service rendered by the service-holder on the Government post was only for the period between 1.5.1961 till 28.2.1969 i.e. 7 years and 10 months which was less than the pensionable service, as is provided under Rule 86 of the Bihar Pension Rules. It is submitted on behalf of the petitioner that under Memo No. 122(25) dated 14.3.1986 Government resolved that the officers and staff of the District Board is entitled to count the service rendered from 1.4.49 or the date of appointment whichever is later for the purposes of counting pensionable service. In the light of such decision other employees of the District Board, namely, Ramphal Prasad and others were allowed such benefit in compliance of the order of the Division Bench of this Court dated 3rd July, 1989, Annexure-1. The Government while considering the case of the petitioner, however, under the impugned order took the view that the case of Ramphal Prasad and others cannot be taken as a precedence as the direction by the High Court in the case of Ramphal Prasad and others was given only for the petitioners before the High Court. Such view taken by the Government in the case of the petitioner is wholly arbitrary. The High Court directed in the case of Ramphal Prasad and others to include the service rendered by Ramphal Prasad and others to the District Board from 1.4.1949 or from the date of appointment whichever was later because there was such Government decision under Memo No. 122(25) dated 14.3.1986. In

view of the memo dated 14.3.1986 the Government ought not to have taken a different decision in the case of the father of the petitioner than the one which was taken in the case of Ramphal Prasad and others and in such view of the matter, I have no hesitation in holding that the order passed by the Government in the case of the father of the petitioner, communicated to the mother of the petitioner under Memo dated 2.12.1999, Annexure-11 is nothing but arbitrary and violative of Article 14 of the Constitution of India. In such view of the matter, I have no option but to quash Memo No. 3657 dated 2.12.1999, Annexure-11 with direction to the Government that arrears of pension of the father of the petitioner for the period between 1.3.1969 till 12.5.1975 and the family pension due to the mother of the petitioner from 13.5.1975 till her death be paid to the petitioner along with interest at the rate of 18% per annum. Necessary compliance of this order be made as early as possible, in any case within a period of two months from the date of receipt/production of a copy of this order before the present Commissioner and Secretary of the Rural Development Department.

3. The writ application is, accordingly, allowed.

(V.N. Sinha, J)

P.K.P.